IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7752 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAILASHBHAI GANPATBHAI PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/01/2000

ORAL JUDGEMENT

#. Heard Ms.D.R. Kachchhwa, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 18-5-99 passed by

respondent No. 1 - The Commissioner of Police, Baroda City against the petitioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicates that in all 5 criminal cases were registered against the petitioner at Navapura police station for the offences made punishable under Sections 447, 452, 427, 506(2) read with 114 of IPC, 135 of BP Act, offence made punishable under 326, read with 114 of IPC and 135 B.P.Act, offence made punishable under Section 324, 324, 504, 506(2) read with 114 of IPC and Section 135 of BP Act, offence punishable under 325, 504 read with section 114 of IPC and section 135 of B.P.Act as well as the offence made punishable under sections 333 read with 114 of IPC and section 135 of B.P.Act. That in each case, the country made liquor was seized from the possession of the petitioner / detenu.

#. Over and above, two witnesses on assurance of anonymity have given statements regarding the anti social activities of the petitioner vide statements dated 18-4-99 and 19-4-99 respectively, wherein, they have narrated the incidents of 17-4-99, 14-4-99 and 31-3-99 respectively. That on the basis of the said material, the respondent No. 1- The Commissioner of Police, Baroda city as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail granted to the petitioner in 3 registered cases though available under Section 437(5) of the CrPC and thereby, the subjective satisfaction reached by the detaining authority has been

vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the detaining authority has observed in the grounds of detention that the detenu was released on bail in all the registered cases against him and proceedings to claim the cancellation of bail would consume more time. However, there is no discussion with reference to on which date and in which case the detenu was released on bail and subsequent to that the detenu / petitioner has continued to carry on his anti social activities and as such what was the reason for the remedy of claiming cancellation of bail was non effective remedy. In absence of the detailed discussions in the grounds of detention, it prima facie, appears that order of detention has been passed without due application of mind and as such, it is difficult to hold the same. Under these circumstances, I am constrained to hold that the impugned order is bad in law for non application of mind.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 18-5-99 passed by respondent No. 1 - The Commissioner of Police, Baroda City against the petitioner is hereby quashed and set aside. The petitioner - KAILASHBHAI GANPATBHAI PARMAR is ordered to be set at liberty forthwith, if not

required in any other case. Rule to that extent is made

absolute.

Date : 25-1-2000 [A.K.Trivedi, J.]

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